

WASHINGTON STATE GAMBLING COMMISSION

MINUTES COMMISSION MEETING THURSDAY, OCTOBER 12, 1995

Chairman Tull called the meeting to order at 1:30 p.m. at the Ramada Inn Clover Island, Kennewick, Washington.

MEMBERS PRESENT: ROBERT M. TULL, Chairman; ARDITH DIVINE, and EDWARD HEAVEY

OTHERS PRESENT: FRANK MILLER, Director; BEN BISHOP, Deputy Director; SHERRI WINSLOW, Assistant Director, Field Operations; CALLY CASS-HEALY, Assistant Director, Licensing; JACKI FISCHER, Financial Investigations Unit; CARRIE TELLEFSON; Special Assistant, Public Affairs; MICHAEL AOKI-KRAMER, Rules and Policy Coordinator; and JONATHAN McCOY, Assistant Attorney General.

Chairman Tull said would be a few alterations to the agenda. License approvals and default hearings would be placed on Friday's agenda, when an additional Commissioner would be present. The Program Review for Columbia Basin Domestic Violence Services will be today and action, if any, will be deferred until Friday so that Commissioner Phelps may participate.

Commissioner Tull said that Commissioner Phelps, Michael Aoki-Kramer and Susan Green were driving to the Commission meeting in a van when it was hit by a falling tree. Luckily they were not seriously injured. Michael was driving and was able to continue to the meeting.

Chairman Tull said that Jon McCoy, Assistant Attorney General, had asked to speak with the Commission in executive session after today's meeting to discuss pending litigation. He said the executive session would be brief and immediately follow the open public meeting.

STAFF REPORTS

Director Miller said there would be one staff report on a supplemental budget request. He said the budget request was approved by the Commission a couple of years ago and the report was to bring them up to date.

Mr. Bishop said in July of 1993, the Commission discussed staffing to monitor Class III casinos. At that time, staff was unsure what impact Class III gaming would have on the the Commission. Staff established a model which proposed to add 2 FTEs for field monitoring and 1 FTE in licensing for each casino that came on line, and three more FTEs to front load licensing, since licensing work came first. Permission was also requested to put three FTEs in administration; one in the Human Resources Division, one in Information Services and a third in the business office. These last options were not immediately filled.

Staffing in the 1995-1997 budget the Commission passed in August 1994 included 14 FTEs for Class III monitoring. Subsequent to that, three additional casinos opened before the beginning of the biennium and nine staff were added according to the model. Thus, the 1995-97 biennium began behind the "power

curve," because there were nine additional people on board with no funds in the budget. Subsequent to the beginning of this biennium, two more casinos opened; the Lummi, with the responsibility of monitoring, and the Squaxin Island. To date, there are eight operating casinos. Taking that into consideration as of October 1st, 26 FTEs are on board for monitoring tribal gaming. Four FTE positions are now vacant, because of staff turnover, etc.

Mr. Bishop said Director Miller met with the executive management team and it was decided to reconsider our tribal gaming staffing model to take into account the following factors: the impact eight casinos were having on the market; reduction in oversight monitoring as tribal gaming agencies gained regulatory presence and experience; and the opening of two new casinos before the end of Fiscal Year (FY) 1996, the Upper Skagit the first of December 1995, and the Suquamish in the first part of 1996.

Mr. Bishop said the distribution of the 26 FTEs in staff positions are as follows; one program manager; three special agent 4s, two in field monitoring and one in licensing; thirteen Special Agent 3's; five licensing technicians; one research analyst; one human resource assistant; one computer information consultant; and one secretary for the program manager. It was planned to put these on before the end of the current fiscal year. The distribution of these 26 FTEs in agency divisions are as follows: fifteen in Special Operations, either in Tribal Gaming, program manager to secretary or special agents doing undercover work; nine in Licensing; and two in Administration.

Mr. Bishop said five FTEs will be added in the near future as follows: three Special Agent 3's in Special Operations, one licensing technician in Licensing Operations; and one in the business office in Administration.

Mr. Bishop said the impact of casinos opening and the market settling on the budget is that the budget needs to be brought up to date by adding 15 FTEs to the current operating budget for FY 1996, and 18 FTEs for FY 1997. The impact is a little over a million dollars each year. The agency is required to keep income equal to the cost. FY 1996 was short by \$136,000. Actually, this will be a short term loss because of up front capital equipment costs. This will be recovered over the next five years by about \$40,000 per year, so when the accrual is computed, the agency will end up a little ahead each year. **Mr. Bishop** said taking the adjustments into consideration, the adjusted budget would be about 9.5 million in each year, with revenue actually exceeding expenditures in both years, which should provide close to \$400,000 surplus at the end to recover some of the up front loading costs that have been incurred. Hopefully, these adjustments will get us back to budgeted figures. This information will be submitted to OFM before the end of this month.

Mr. Bishop reminded the Commission this budget presentation does not require additional approval since the model was approved last year. The presentation was intended to keep the Commission up to date.

Mr. Bishop asked if anyone had any questions.

Commissioner Heavey asked if the number of people used for tribal gaming regulation is decided pursuant to the compacts, or unilaterally. **Mr. Bishop** said staffing is not part of the compacts. The compacts call for the Commission regulate as it deems necessary in accordance with the compacts. He said reports indicate there is approximately 230 hours of regulation each month in each casino, and the certification process is a part of that figure.

Commissioner Heavey asked if these positions are funded by charges to the nations. **Mr. Bishop** said yes. **Commissioner Heavey** asked if the tribes have been made aware of this staffing increase. **Director Miller** said yes, because these are people already on board and working with the tribes. The tribes are

aware that three positions are funded per casino. **Director Miller** said the agency is telling tribes now that next term this will be phased down.

Mr. Bishop said that staff are not put on until a casino is opened. There are plans to add three FTEs for the next casino. He said he hoped the tribes understand these FTEs are for them, because they are a part of the compact and we have to have staff to regulate.

Commissioner Heavey asked if this will result in an increase of compact payments by the Nations that already have operating casinos. **Mr. Bishop** said no, the FTEs are added when a casino is opened, and that casino will be billed for added staff.

Commissioner Tull said certifications are handled on a flat rate charge per applicant and all of the regulatory/field work is reimbursed on a quarterly basis through billing the tribes for the work performed.

Director Miller said the current billing rate is under review to ensure it accurately covers agency costs. He noted with increased staff and increased costs, there may be an increase. The tribes have not been advised of that, but the Commission is starting to advise them an increase may be coming.

Mr. Bishop said that up to the eight casinos now operating, the Commission's basic model was three FTEs for each casino. After the front loading of support people, two things are beginning to happen; first, as the market matures, the casinos will probably reduce their operating hours; second, as the tribal gaming agencies get more experience, their regulatory presence will carry more weight. Both of these factors will call for us to have a smaller presence. So now, rather than putting on three new FTE's per casino, we are adding 1 ½ FTEs for each new one.

Commissioner Heavey asked if billing was based upon time actually spent at the casino. **Mr. Bishop** said yes, for the field operations, and that there is a set fee on each application for certification. **Commissioner Heavey** asked if the overhead charge was built into that billing. **Mr. Bishop** said yes, but these are the amounts currently under review for accuracy.

Commissioner Tull asked if the audience had any questions. He said that it is not a regular thing to offer the opportunity to comment on this topic, but this is an interesting issue and there might be folks who have questions. He said that as most licensees are aware, if they have questions they can talk to staff at almost any reasonable time. There were no questions.

Commissioner Tull asked Director Miller if there were other reports. **Director Miller** said no.

Commissioner Tull stated that item #2 would be held over until the next day and that there are no manufacturers or management companies before the Commission today. He moved on to the review of Friday's agenda.

REVIEW OF FRIDAY'S AGENDA

Carrie Tellefson said an amended agenda was provided in a handout form. The amended agenda includes staff's proposed emergency rule that would impose a moratorium on the issuance of mandatory downgrades for failure to meet bingo license class net income compliance requirements. **Ms. Tellefson** said staff would be discussing this proposal with the Commission on Friday. She said Director Miller would be discussing the impacts of I-651, as requested by the Commissioners last month and an analysis has been provided to the Commissioners. Ms. Tellefson said a set of rules had been discussed with the Washington State Licensed Beverage Association, having to do with commercial gaming, and some rules

affecting bingo licensees. For discussion and possible filing are four rules to amend raffle wagering limits pursuant to the change in the law last year. She said the Spokane Athletic Round Table conditionally withdrew their petition pending the outcome of the emergency rule. Ms. Tellefson asked if there were any questions. There were none.

Commissioner Tull moved to item #6 on the published agenda.

PROGRAM REVIEW

COLUMBIA BASIN DOMESTIC VIOLENCE SERVICES, Kennewick

Bill McGregor, Special Agent from the Spokane office, presented the Columbia Basin Domestic Violence Services (CBDVS) program review. He said that as part of the non-profit qualification review program, several licensees are selected and a program review is conducted on their program services. These reviews are important to verify the existence and extent of a program's services and to ensure that gambling funds are spent on the program's intended purposes. **Mr. McGregor** said the report the Commissioners have before them encompasses an overview of CBDVS's history, structure and program services provided. He said the organization was formed in 1976, as "A Woman's Place," and it was incorporated on January 25, 1977. In May 1989, the name was changed to Columbia Basin Domestic Violence Services. The stated purpose of the organization was to provide temporary shelter, 24 hour crisis intervention, counseling, legal advocacy and support services to victims of domestic violence in the Columbia Basin. CBDVS has been licensed since 1985 and currently holds a Class "I" Bingo license, Class "L" Punchboard/Pull Tab license and a Class "A" amusement game license. For the fiscal year ended December 31, 1994, the organization's gambling net revenue was \$534,671.00, which is 87.9% of their total revenue. CBDVS spent \$494,064.00 in support of their stated purpose, including \$103,166.00 in administrative expenses, which is 20.9% of their total expenses. **Mr. McGregor** said CBDVS is currently governed by a board of directors; six directors and four officers. Their by-laws call for a seventh director, which is currently vacant. Voting members are defined by the organization's by-laws as being active volunteers of CBDVS Programs, Corporate directors and employees of CBDVS. Programs provided by CBDVS include a temporary shelter for women and children, a 24 hour crises line, counseling, public education programs and other programs as described in the Commissioners' report. **Mr. McGregor** listed the following representative program services provided in 1994: the shelter served 438 individuals for 5,060 bed nights; counseled 559 individuals a total of 4,118 hours; answered over 10,000 phone calls, including 1,216 crisis calls; and completed 35 public presentations reaching 4,128 people.

Mr. McGregor said CBDVS's operations were reviewed and evaluated regarding whether they have maintained an independent management control system as required by the rules. As part of this system, the organization must be overseen by an independent board elected by its members, who each have a single vote. The following weaknesses were noted: for at least the last two elections, only board members have voted in the election of officers. The organization membership, in the past, did not appear to have control over the election of the corporation's officers or board members. The organization's Articles of Incorporation have some conflicts with their by-laws regarding the number of directors.

As a result of the program review, CBDVS should complete the following three items: 1) The organization's by-laws should be amended to agree with the Articles of Incorporation. 2) The organization should design and implement a plan whereby the membership can actively participate in the nomination and election process of board members. The plan should include a method to educate the members on the election and nomination processes, and the organization must ensure elections are documented and conducted in an independent environment. They should submit documentation substantiating a valid election was conducted within 30 days after their next election. And, 3) staff recommended that CBDVS improve internal controls to ensure the assets of the organization are safe-guarded and the original receipts are retained

with the records. Based upon this review, staff recommended temporary qualification as a charitable organization for the purpose of gambling in the State of Washington. **Mr. McGregor** said the Commissioners were given a handout of some corrections to the by-laws the organization has made. The corrections were given to Mr. McGregor Thursday morning.

Mr. McGregor introduced **Tom Morgan** of CBDVS.

Tom Morgan said he appreciated the opportunity to appear and make a presentation to the Commission. He introduced the board president of CBDVS, **Dr. Joseph Thurston**.

Dr. Thurston said he has been president of CBDVS for the past couple of years and that he takes great pride in this non-profit agency, which provides support and services for people and victims of domestic violence. He said the domestic violence issue has come to the forefront lately and public awareness and education have increased. He said CBDVS's six board members are present, including himself, and they all take pride in the agency and that it was disconcerting to hear Bill McGregor's news that a few things were being conducted inappropriately. **Dr. Thurston** noted that steps have been taken to correct these problems, which Mr. Morgan will address later. **Dr. Thurston** said he has been a dentist for the past 21 years and has been associated with CBDVS as a board member for almost 4 years.

Dr. Thurston introduced Jane Carlson, past president; Jean Carlson, director; Sue Schmeck, treasurer; David Chasin, past treasurer; Kay Barkin; and Joe Jackson, president elect.

Mr. Morgan introduced his staff who were present; Sue Meek, client services director; Catherine "Tappy" Risch, administrative assistant; Fredia Bond, bingo manager; Buffy and Pat Lacey, both assistant managers at the bingo palace.

Mr. Morgan asked **Joe Jackson** to say a few words.

Mr. Jackson thanked the Commissioners for the opportunity to appear before them. **Mr. Jackson** said he has been employed on the Hanford site since 1957, and at present he is the manager in engineering and technical support services for the ICF Kaiser Hanford Company. He served on the Pasco City Council for 10 years, 6 years of which he served as mayor. He has served on numerous boards, commissions, committees, locally and statewide and he has been a member of the CBDVS board of directors for 4 years.

Mr. Jackson said he wanted to serve on this board of directors to assist in developing programs providing assistance to people who are victims of domestic violence, utilizing education and other means as appropriate. The board, with the administration, works well together to assure the organization meets the needs of its clients and customers.

Mr. Morgan asked past president **Jane Carlson** to come forward.

Ms. Carlson said she is a resident of the City of Richland and has been employed on the Hanford site since 1970. She is currently with Batelle and has been there for nearly 20 years. She is a program administrator there. She said she is happy to be at the meeting in support of the board, the agency and the community for CBDVS and to have this opportunity to share with the Commissioners a detailed history of the agency and its accomplishments since she was appointed to the board in 1989. She said CBDVS was formed in 1976 and incorporated in 1977 by a group of concerned citizens. CBDVS is a non-profit serving the Tri-Cities and the outlying rural communities in the Columbia Basin. At that time, the mission of the agency was to provide a temporary shelter, counseling and supportive services to victims of domestic violence and their children. She said at its grass roots, CBDVS was carved out of a resistant and uninformed community. Today CBDVS is the oldest autonomous shelter in Washington and is an active part of the network of community services and continues to actively promote the rights of victims of

domestic violence. She said at no time in CBDVS's history has there been more local and national events concerning domestic violence.

In 1989, the general membership voted to change the name from "A Women's Place" to CBDVS. It was felt that this new name more adequately reflected the services provided to the greater community. **Ms. Carlson** related some of the highlights of 1990: the board restructured the positions in the staff to better serve the organization in meeting the goals of the agency: a Pasco office was established to allow outreach to the Hispanic community; a building and property located in Kennewick was purchased to house the new administrative offices moving out of a one room facility in Richland; and the Bingo Palace continued to increase its support in performance of our objectives.

1991 was a significant year for CBDVS, after a few years of strife and changes in the administration of the agency, it became evident that there was a need to restructure management and hire a person with greater skill level in managing staff and money. The board of directors employed a general manager to fill that newly created position and the vacated positions of client services director, community liaison and other support staff, and the administrative staff moved into the new Kennewick offices. At that point in time, the board also established a strategic planning committee and defined and refined the agency's key concerns and work on long range goals. The board of directors committed to providing a transition house program in a facility provided by the Richland Housing Authority. A perpetrators program was designed and a search for a qualified counselor was initiated. Staff employed new accounting and reporting procedures to align with the commission's requirements and government contracts. The volunteer program was revitalized to assist with all program areas of the agency, and again the Bingo Palace mounted its efforts to support all of these programs.

Ms. Carlson introduced **Sue Schmeck**.

Sue Schmeck said her first involvement with the CBDVS was in 1991, when it began its strategic planning efforts. She worked with them on a consultant basis to initiate those efforts. She said she was impressed with their commitment for focusing their efforts and planning ahead on how to increase and expand their ability to provide shelter, counseling, intervention programs and other support services. As a result of these initial planning efforts, monumental progress has been made in those areas, including the transition home and anger management. These two were long term goals of the agency in 1991 and because of the focused strategic planning effort in 1991, CBDVS was able to quickly realize those goals. Therefore, when she was approached by CBDVS to be apart of the ongoing strategic goal planning, she saw it as worthwhile and wanted to become involved. She said CBDVS is continuing to look at ways to expand their influence and educate the public in awareness, as well as meet the needs of victims locally.

Mr. Morgan said CBDVS started with a handful of volunteers who were actually taking the victims of domestic violence into their homes. This became a dangerous situation, with the potential of an irate husband waiting in the wings. A room was rented which lead to a house. Since that time, considerable funds have been spent to expand the size of the shelter to accommodate more people. Today, up to 35 women and children can be accommodated at one time. He said that about 3/4 of the time the shelter is full. **Mr. Morgan** said there is the problem of temporarily helping women and sending them back to the abusive situation and having them return to the shelter. As a consequence, the board committed to start an anger management program. The anger management program began in May of 1992. Since that time, CBDVS has attempted to serve 370, 240 of which have graduated. This anger management program could not have been started without the bingo resources. Today, CBDVS's anger management program is the only state certified perpetrator treatment program in Benton and Franklin Counties. He said the transition home was needed to house women coming from an abusive home, most with no jobs, no resources, and little training and skill. Under the charter of DSHS, CBDVS has 29 days to show their clients other alternatives and educate them on their options. It was found that many women returned to the shelter, he

felt due to the short 29 day stay. Mr. Morgan said CBDVS was not happy with this and began looking around for a transition home to offer extended services in a secure environment for 7-8 months, or whatever time was needed. A nominal rent is charged at the transition home, approximately ½ of the client's income, with 1/3 of that being put into an escrow account and is remitted to them as they leave the transition house.

Mr. Morgan said the "First Alert Program" began in 1994 by a grant, therefore bingo money did not play a role in getting this program started. However, without the security of having the bingo funds, this program probably would never have been attempted. This program works with law enforcement and puts a counselor on the scene when domestic violence incidents occur. Therefore services can begin immediately to keep people safe.

Mr. Morgan said the major problem for women entering the shelter is no money, and little training and education. The costs of raising a child often make it impossible for a woman to afford be on her own, so she usually returns to the abuser. Therefore, CBDVS is considering a child care service on a sliding fee basis and expand clientele to include other social service agencies. This is an important service and something that CBDVS wants to do. Another concern is finding jobs for women. He said CBDVS wants to offer a program for women to prepare them for interviews and finding employment. He asked if anyone had any questions.

Commissioner Tull asked how the bingo volume is holding up at the present time? **Mr. Morgan** said that it is holding its own, but is slower due to the Wild Horse Casino in Pendleton, Oregon. He said some bingo players who were going to the Wild Horse have returned to CBDVS's bingo hall due to the high cost of playing at the Wild Horse.

Commissioner Tull asked if staff had reviewed the updated report submitted by CBDVS. **Mr. McGregor** said he reviewed it briefly as it was just received before the meeting. **Commissioner Tull** said with his quick scan of the documents, it appears that the appropriate steps are being taken, but that his comments were preliminary.

Mr. Morgan said he has worked with non-profit boards for the past 17 years and CBDVS has some of the finest, most committed individuals. They are serious about their jobs. He said he feels the present problems are due to an inadvertent misinterpretation of Commission rules. The entire board was reconstituted from 1991 to 1993, and the current staff were following what was passed from their predecessors. Everyone has been invited to vote and the floor has always been open to vote. **Mr. Morgan** felt that it may be his fault that staff were not educated overall that they had the right to vote. He felt voting rights were understood by all. He feels this is a harmless error and no one has been hurt by what has happened, no money lost. All of the issues have been addressed by the board, the amendments have been made and passed on September 20, of which the commissioners have a copy.

Commissioner Tull noted there are several purposes for program reviews. Among the reasons is for Commissioners, as they rotate, to learn about the organizations doing important work throughout the state, and also for board members to take a closer look at gambling regulations. It is also a chance for Commissioners to communicate directly to board members. One issue on which the Commission has made steady progress is making sure that non-profit and charitable groups who make use of gambling opportunities are run by independent boards of directors, who make sure all appropriate safe guards are in place and carried out. In the past, there have been problems (not in CBDVS's case), where organizations were taking gambling money and spending it on the special interests of members or employees. This is unacceptable and one of the steps, in addition to close scrutiny, is to make sure board members understand they have to act carefully, pay close attention, support and monitor staff. He noted he makes comments of this nature at all program reviews and this is not directed at any particular individual. If it

were, he would be very specific about that. **Commissioner Tull** said in this instance, staff have had the opportunity to review this organization and offer any further suggestions. It appears this organization is heading in the right direction and there is no doubt the work CBDVS is doing as an organization is of great importance and will continue to be of great importance.

Another purpose for the program reviews is to offer board members the opportunity to ask questions that may have not been convenient to ask about gambling regulations, or other aspects of what the Commission does. **Commissioner Tull** asked if there were any questions or comments from administration. He asked Director Miller if he had any questions or observations. **Director Miller** said no. **Mr. Bishop** said he worked with CBDVS when it first started out and it has come a long way. He feels the recommendations by staff are not fatal, but it will take some time to work through the mechanics and he appreciates CBDVS members getting involved.

Commissioner Tull reminded the audience the vote on CBDVS will be deferred until tomorrow. He asked if any of the commissioners had any problem with accepting staff's recommendations. They answered no. He said according to the informal poll, it appears CBDVS board members would not need to return for tomorrow's meeting, unless they wanted to. Commissioner Tull said he anticipated that the temporary certification will be passed in the morning and that the regular certification will be granted at a future meeting when the questions are resolved. **Director Miller** asked if there was a time period recommended on this? **Bill McGregor** said staff would recommend review after CBDVS' next elections in March 1996, to show that the election process has been put into place and functioning as it should be.

Commissioner Tull said this was a reasonable qualification and again the main thing is to have strong boards in organizations and that their rights and responsibilities are understood. He thanked staff and board members for taking the time to be present. He said the commission is gratified in hearing these reviews and the positive uses that gambling can produce through as a revenue source. He thanked CBDVS board members for coming.

Jacki Fisher, Special Agent 4 in the Financial Investigation Unit, said that one item on the agenda that was inadvertently left off was a follow up review for the Educational Institute for Rural Families (EIRF), located in Pasco. She said during the meeting held in Spokane on November 17, 1994, the program review of the Educational Institute for Rural Families was presented to the Commission. Based upon staff's report, the Commissioners requested a follow-up review be conducted to verify if the recommended changes had been implemented.

Ms. Fisher said staff visited the organizations's premises on July 9 and 10, 1995, and performed an on-site inspection of their records. At the conclusion of the on-site inspection a conference was held with the president, executive director, bingo manager and other employees to explain the findings. Based on staff's recommendations in the previous report to the Commission, the organization has made progress in several areas. The organization designed and implemented a plan whereby their membership can actively participate in the nomination and election of board members and/or officers. The organization also amended its by-laws to limit the time an individual can serve on the board without being elected by the membership in the case of a vacancy. The organization established and implemented an internal control system which ensures all funds and assets directly or indirectly obtained with gambling proceeds do not go to specific individuals. A written policy was implemented defining the responsibilities and authority of the organization's directors. The organization established policies regarding related party transactions and established and maintained a budget process where the annual budget is approved. The budget is now reviewed on a monthly basis and compares actual revenues and expenses to budgeted figures. Documentation of board and parent action meetings minutes were improved. Lastly, staff recommended that the organization examine the feasibility of having a parent representative on their board of directors. This would add representation of the clients EIRF serves who may have different needs and concerns than other board members who have children that are not receiving services. The organization should also

encourage member participation and attendance at board meetings. Staff discussed this and feel strongly that the organization should implement this recommendation, which EIRF has not yet done. In conclusion, based on staff's analysis, the organization has made progress towards implementing the recommendations made during the previous program review, with one exception. Staff recommends approval for qualification as a charitable organization for the purposes of conducting gambling in the state of Washington.

Ms. Fisher introduced the organization's president, Evelyn Wackley.

Evelyn Wackley responded to the recommendation that a parent should sit on the board. She said it has been difficult in the past to get a parent on the board. She said the organization works with a largely migrant population, and unfortunately, that brings along with it two problems. First, the families with whom EIRF works are typically not in the area year round, so a majority of the members would not be available to attend regular board meetings held once a month. Second, when the families are in town they are often working long hours out in the fields, including Saturdays and Sundays. Even though board meetings are held in the evenings, or could potentially be moved to Saturdays, the parents are often still not available to come to meetings. In the past, they have attempted to find parents to serve on the board. Each time a board member resigns and there is a vacancy, they go to the parents and ask for input. Unfortunately, no volunteers have come forward. Another problem is a majority of their centers are located in rural areas, as far as 30-40 miles from the Tri Cities area and transportation is often a problem. One board member resigned 3-4 months ago and parents were asked for a representative. They suggested people who work closely with them in their community to serve as a board member. To compensate for their unsuccessful efforts, a few things have been done. Meeting agendas are sent to parents and they are encouraged to express their concerns and issues to a board member so they can be discussed at a meeting. She said before the Gambling Commission's program review, board members didn't visit many centers. They worked hard this year to have a board member visit each center at least once, in a majority of cases twice, each year during the peak season to get input from parents and families about services. There are three board members who currently do not migrate, but have migrated in the past and are aware of the difficulties migrant families face. She said two board members are working directly with families through positions they hold with school districts or with social services agencies. EIRF has tried things to compensate for its lack of a parent board member. They will continue to try and find a parent willing to be active and is available on a regular basis to give input needed by staff.

Director Miller congratulated the organization on how well they are doing.

Commissioner Tull said he is satisfied with the explanation and staff's program review points out that good efforts were made to address the parent board member issue.

Mr. Bishop said the original concern was membership, whether the clients are members or not. Because they migrate, it was difficult to define who members were. **Mr. Bishop** asked **Ms. Fischer** if the Commission is satisfied that there are active members. **Ms. Fischer** said yes and the organization has made good progress in that area.

Director Miller said he feels this is a case where the program review was successful. The Commission worked with the organization to help it meet statutory qualifications, which is very important.

Commissioner Tull asked if any action was required. **Ms. Fischer** and **Director Miller** said that the organization is currently on temporary status. **Commissioner Tull** said it appears there are no problems and it would be addressed Friday after staff give an update to Commissioner Phelps. He thanked everyone for the program review.

Commissioner Tull asked for Group IIs.

Ms. Fischer said at the March Commission meeting staff gave a special scope audit report of CAYA and the Commissioners approved CAYA's qualification on a temporary basis. The Commissioners requested staff give a follow-up review at the October meeting. Due to workload and time constraints, she asked to reschedule until the November Commission meeting and requested an extension of CAYA's temporary certification until then.

Commissioner Tull said this would be voted on tomorrow and questions discussed at that time.

QUALIFICATION REVIEWS

AMVETS #1, Tacoma

Ms. Fischer said Amvets is located in Tacoma with licenses for Class "I" bingo, punchboard/pull tab and raffles. First formed in 1946, Amvets has been licensed since 1974. They have 1,512 voting members. Amvets accomplishes its stated purposes through maintenance of a bonafide Amvets office at their facility. This office assists veterans and other eligible persons in processing benefit claims, pensions and other entitlements. They offer financial and volunteer assistance to organizations who care for hospitalized veterans. Last year, Amvets served 168 members and 4596 members of the general public. Net gambling revenues total \$317,913.00 for the year. Bingo net income was 73.5% of total revenues. \$325,535 dollars were spent supporting their stated purposes. Administrative costs totaled 15.9% of total expenses.

Staff recommends approval for qualification as a patriotic organization for the purposes of conducting gambling in Washington.

YAKIMA Y.W.C.A, Yakima

Ms. Fischer said Y.W.C.A. is a charitable organization with licenses for Class "J" bingo and punchboard/pull tabs. First formed in 1909, Y.M.C.A. has been licensed since 1974. They have 336 voting members. An accredited chapter of the national YWCA, the organization's charitable services were provided through 11 major programs. Some of those programs are volunteer attorney services, short term low cost housing to single low income women and a 72 hour response program which tries to prevent repeated incidents of abuse through early intervention. Y.M.C.A. serves 3,522 members of the general public, in addition to their organization's 36 members. Net gambling revenues total \$194,551.00. Bingo net income was 27.5 % of total revenue. \$515,986 was spent supporting their stated purposes, including \$78,745.00 to cover administrative costs.

Staff recommends approval for qualification as a charitable organization for the purposes of conducting gambling in Washington.

BIG BROTHERS/SISTERS OF SPOKANE COUNTY, Spokane (BBS)

Ms. Fischer said BBS is a charitable organization with licenses for Class "M" bingo and punchboard/pull tabs. BBS formed in 1965 to provide guidance, aid and companionship to children from single parent homes. Management and program staff provide adult role models for single parent children through a variety of match types. Matches are evaluated, selected and monitored by case workers. BBS served 105 new matches for a total of 242 matches served during the year. Contributions total \$11,395.00. Net gambling revenues total \$704,701.00. Bingo net income was 73.4% of total revenue. \$708,714.00 was spent supporting their stated purposes.

Staff recommends approval as a charitable organization for the purposes of conducting gambling in Washington.

Commissioner Heavey asked if money raised through bingo and pull tabs being spent on direct social services could be calculated in order to get an idea of what services normally funded by taxpayers are shifted from the general populous to bingo and pull tab players.

Commissioner Tull said services need to be defined as to which would likely have been funded, or at sometime funded from other sources. He said it is a significant number.

Director Miller said it would be hard to say.

Mr. Bishop said the agency separates charitable from non-profit. Typically charitable is supported by tax dollars or private contributions.

Director Miller said over the years many organizations undergoing program reviews have indicated that cuts in federal funding total more than bingo revenue.

Commissioner Heavey thought it would be interesting to know if revenue has shifted from current recipients to another group, since Indian gaming might shift that from one group to another group in terms of the services provided. Specifically, how much money is lost from the Boys and Girls Club in Tacoma because of bingo on the Puyallup Tribal Reservation and from South King County to the Muckleshoot Tribe.

Director Miller said the agency is getting that data.

Commissioner Heavey asked what the financial impact to operations would be if I-651 passes. He said he and maybe the general population might be interested in knowing.

Director Miller said the agency has a lot of data and many ways to see impacts. There are changes now in revenue from one group to another. It is unknown in situations, such as tribal bingo, because the money goes to the tribe and the federal government regulates that. **Director Miller** said an analysis of money raised could be broken down by charitable vs. non-profit.

Commissioner Heavey said that religious would have to be taken out of that.

Director Miller agreed. He said it would be analyzed and developed. He said bingo brings in about \$20-25 million in profit, over \$200 million in gross. Pull tabs bring in a tremendous amount to charities and should be discussed. Almost \$30 million in taxes alone.

Commissioner Tull said this could be discussed Friday when the impacts of I-651 passing are discussed.

Commissioner Tull asked if there were any more items for general discussion. He said executive session would be meeting shortly.

Chairman Tull adjourned the meeting and called for an executive session to discuss pending investigations and litigation.

WASHINGTON STATE GAMBLING COMMISSION

MINUTES COMMISSION MEETING FRIDAY, OCTOBER 13, 1995

Chairman Tull called the meeting to order at 10:00 a.m. at the Ramada Inn Clover Island, Kennewick, Washington.

MEMBERS PRESENT: **ROBERT M. TULL, Chairman; ARDITH DIVINE, EDWARD HEAVEY, and S. DON PHELPS**

OTHERS PRESENT: **FRANK L. MILLER, Director;
BEN BISHOP, Deputy Director;
SHERRI WINSLOW, Assistant Director, Field Operations; CALLY CASS-HEALY, Assistant Director, Licensing; CARRIE TELLEFSON, Special Assistant, Public Affairs; JONATHAN McCOY, Assistant Attorney General; and JIM DIBBLE, Program Manager, Field Operations Division.**

Chairman Tull introduced those seated at the head table and said that the executive secretary, Susan Green, is absent today due to a car accident that occurred when a tree fell on the agency van en route to the Commission meeting. Jim Dibble is operating the sound equipment in her absence.

Chairman Tull said the agenda is amended to include some action items deferred from yesterday's agenda: program reviews will be taken up for a vote later today. The report and analysis of Initiative 651 will be heard at the end of today's agenda so audience members may free to leave if they don't want to stay for the entire discussion.

APPROVAL OF THE MINUTES FROM THE SEPTEMBER 14 & 15, 1995, MEETINGS

Commissioner Heavey moved to accept the minutes from the September 14-15, 1995, Commission meetings in Bellingham, Washington, as set forth in the agenda packet; **Commissioner Phelps** seconded the motion; motion carried with three aye votes.

ADOPT OR AMEND RULES

PETITION/Washington State Licensed Beverage Association

Chairman Tull said this item is up for discussion only today, with final action in November. **Ms. Tellefson** said the WSLBA's petition originally contained 13 rules, but after coming to an agreement with staff has amended its original petition and withdrew all proposed rules except the following:

Amendatory Section WAC 230-30-080

((Limitation on)) Pull tab dispensing ((devices)) limitations.

Ms. Tellefson said the following is presented by staff in cooperation with a coalition of Hospitality and Gaming Industry associations regarding commercial gaming. These changes are for discussion only with final action in November 1995:

Amendatory Section WAC 230-02-300
Substantial interest defined.

Amendatory Section WAC 230-30-050
Punchboard and pull tab operation.

Amendatory Section WAC 230-30-065
Punchboard/pull tab price per play to be posted.

Amendatory Section WAC 230-30-070
Control of prizes

Amendatory Section WAC 230-30-080
~~((Limitation on))~~ Pull tab dispensing ~~((devices))~~ limitations.

Amendatory Section WAC 230-30-097
Standards--~~((Coin-operated))~~ Approved pull tab dispensing devices.

Amendatory Section WAC 230-30-106
Standards for flares, made by manufacturers, distributors, or operators.

Amendatory Section WAC 230-40-050
Fees for card playing

Amendatory Section WAC 230-40-125
Washington blackjack--Rules of play--Wagering limits

Amendatory Section WAC 230-40-200
Participants to compete on equal terms--Deal to rotate among players.

Amendatory Section WAC 230-40-225
House dealer allowed in ~~(("pan" or poker))~~ certain games.

Amendatory Section WAC 230-40-400
Hours limited for card games.

Repealed Section WAC 230-40-310
No free or discount food, beverage or merchandise to be offered at public card room

Chairman Tull said the rule adoption process requires that the Commission afford several opportunities for audience comments and written testimony. No one came forward with comments on these rules.

Ms. Tellefson said the next group of rules includes bingo record keeping clarification rules, a rule that allows a bingo occasion to last up to 18 hours as opposed to 16 hours and allows bingo occasions to go until 4:00 a.m. upon meeting certain conditions. These rules are up for further discussion with final action in November.

Amendatory Section WAC 230-08-080
Daily records--Bingo

Amendatory Section WAC 230-20-170
Bingo operation ((date)) time and use of premises limitations.

New Section WAC 230-02-102
Bingo occasion defined

New Section WAC 230-02-104
Bingo session defined

Chairman Tull asked if anyone would like to testify on these rules; no one came forward.

HOUSEKEEPING CHANGES -- RAFFLE TICKET PRICES

Amendatory Section WAC 230-20-325
Manner of conducting a raffle

Amendatory Section WAC 230-20-335
Raffles conducted among members of an organization--Procedures--Restrictions

Amendatory Section WAC 230-25-040
Fund-raising event--House rules to be developed and posted--Limitations on wagers

Amendatory Section WAC 230-25-220
Raffles or similar lotteries conducted at fundraising events

Ms. Tellefson said these are housekeeping changes to reflect the Legislature's change made during the last session, which authorizes the sale of raffle tickets up to \$25 as opposed to the former limit of \$5. These rules are up for discussion and possible filing; staff recommends filing for further discussion. **Chairman Tull** explained that if the Commission decides to file these rules, that decision has nothing to do with the ultimate adoption or non-adoption of the rule. The Commission always offers people a chance to be heard regarding rule changes.

Commissioner Phelps moved to file the raffle price housekeeping rules for further consideration; **Commissioner Heavey** seconded the motion, motion carried with three aye votes.

EMERGENCY RULE

Amendatory Section WAC 230-20-064

Ms. Tellefson said this change is proposed by staff and would impose a moratorium on the issuance of mandatory downgrades under the net income rule for non-profit licensees. It would give Commission staff the opportunity to study the potential causes of the downgrades that have been occurring and come back with a recommendation within a year. Staff recommends adoption as an emergency rule.

Director Miller said last month a concern was brought to the attention of the commissioners that there were approximately 16 or more licensees in the state failing to meet their net income requirements. As of last count, there are approximately 27 of the top games that are failing to meet net income requirements.

In response to the licensees' problems, **Director Miller** said he asked the industry to forward ideas and possible solutions so the Commission could look at this issue and help fix the problem. During the last month, staff has met with licensees and potential solutions were submitted. At this point there is not enough data to go forward with a permanent solution, but there is a situation out there affecting the ability of current games to make their net income requirement. Some games have done everything possible and are still out of compliance. A task force of regional industry representatives, staff and hopefully commissioners, will be formed in January 1996 to look at the entire issue. A solution may be something currently in place or something different, such as a regional solution that addresses different locales or a statewide solution. The emergency rule does require that the games notify the Commission if they wish to participate in the moratorium and they must be within 2-1/2 percent of their net income requirement, which is about half the games that are currently in violation. The other games would have to improve or be downgraded. There would be a freeze on controllable expenses, and they would have to report those expenses.

Director Miller said staff supports this as a good, temporary solution to allow time to study the problem. He said there is an emergency in this state and if nothing is done, many games could be downgraded and the penalty too severe if this issue is not studied. The issue is important and affects the health, safety and welfare of this industry, so staff recommends filing as an emergency rule, which would result in the rule being on the agenda for comment for three months. He said by adopting this on an emergency basis, the rule would immediately affect some games that have prior downgrades and help those games while a solution is worked out and the task force put into place.

Commissioner Phelps asked how staff arrived at the 2-1/2 percent figure. **Director Miller** said it was discussed amongst study group participants and was a compromise figure arrived at by staff with input from licensees.

Commissioner Phelps asked what percentage of the people now out of compliance would benefit from the 2-1/2 percent figure. **Director Miller** said approximately 50 percent would benefit from the variance. He said 2-1/2 percent still keeps the burden on the licensee to stay close, and the prize payout regulation remains in effect, so if they have prize payout violations, those penalties will still be imposed against the bingo manager. The 2-1/2 percent margin is fair and anything below that is a significant reduction of net income.

Commissioner Phelps asked about the games that are 2-3/4 or 3 percent out of compliance. **Director Miller** said those games will have to cut their expenses and come into compliance or be automatically downgraded at the end of six months, or they could petition the Commission for relief if they chose. **Mr. Bishop** said if they were able to get their percentage within 2-1/2, they would then be allowed to upgrade. Everyone will have an avenue for relief.

Chairman Tull asked for public comment.

Kevin Crum, president of the Washington Charitable and Civic Gaming Association, said his group's membership supports this emergency rule and appreciates staff's timely response to the problem. He said the group looks forward to working with the Commission staff to arrive at a solution.

Don Kaufman, Big Brothers and Sisters of Spokane, said he echoes Kevin Crum's comments. The only concern he has is in the last sentence of the change where it says, "when the moratorium ends, downgrades will be immediately issued utilizing the criteria set forth in this section." He said the word "may" would be a better word than "will." If this section is changed, it will be confusing to know which version of the rule is being referred to. **Director Miller** said the intent was that, in the event the study

determines that the rule is appropriate as written, then those parties that would still be in violation know as of today that they have to get into compliance, or at least within 2-1/2 percent, by the end of next year. If they rule is unchanged, they would be downgraded in accordance with the rule.

Chairman Tull said he doesn't like the language, "downgrades *will* be..." and agrees "may" would be a better word. **Commissioner Heavey** suggested stating that the moratorium terminates January 1, 1997, and delete the rest of the sentence. **Director Miller** agreed and said the entire last sentence could be deleted, since the end of the moratorium is indicated above. **Mr. Bishop** said the 2-1/2 percent is void at the end of the moratorium and licensees should be working toward compliance.

Chairman Tull called for public comment.

Frank Cuta, president and chairman of the board, United Blind of the Tri Cities, said he is in favor of this emergency rule change. In hearing the clarification regarding the burden on the bingo manager to still meet the payout percentage compliance, he said there are many reasons for the difficulty in meeting net income requirements, such as the downturn in the economy, which causes a decrease in attendance. There is sometimes nothing a manager can do when the attendance drops because of a downturn in the economy.

Ms. Cass-Healy said that yesterday, during the study group meeting, the words, "prize payout requirements" were stricken from subsection 7 (b). **Director Miller** said the responsibility is on the bingo manager, who should adjust prize payout when the crowds decrease. Secondly, this rule dictates the penalty, which is a warning for the first year of non-compliance and a three-day suspension on the bingo manager for the second year. Under previous rules, the penalty was levied against the organization; however, it is the manager who directly controls the game, not the board of directors of an organization.

Chairman Tull asked if that is based on the notion that the Commission does not want bingo managers to bleed dry an organization during a downturn in business by not adjusting the prize payout. **Director Miller** said yes, and if that requirement were removed, it could allow an upgrade of prizes, which attracts players from other games and gain the advantage. **Chairman Tull** said the net income requirements are to make sure management is not the sole beneficiary of gambling activities, but the charity benefits. He said the proposed rule includes the change in 7 (b) where "prize payout" is removed from the sentence. The final sentence in paragraph 8 is also deleted.

Chairman Tull called for a motion to adopt this as an emergency rule, complete with the two deletions noted above; **Commissioner Heavey** moved for adoption; **Commissioner Phelps** seconded the motion; motion carried with three aye votes. **Chairman Tull** said this also temporarily addresses the petition from Spokane A.R.T, which was a provisional request for relief. He said this rule would be filed and there will be on-going discussion pursuant to the Administrative Procedures Act.

UNFINISHED BUSINESS/OTHER

LICENSE APPROVALS

NEW LICENSES, CHANGES, WITHDRAWALS, and TRIBAL CERTIFICATIONS

Chairman Tull said the vote on license approvals was delayed until today so there would be a quorum; **Commissioner Heavey** moved for approval; **Commissioner Phelps** seconded the motion, motion carried with three aye votes.

DEFAULT HEARINGS

Chairman Tull said the default hearings were also held over from yesterday and the commissioners have file materials on each of these two cases. There have been no further comments on either of these proposed licensees.

Richard Handley, Case No. CR 95-0090

Melvin Bailey, Case No. CR 95-0511

Commissioner Heavey moved to enter the defaults as recommended by staff; **Commissioner Phelps** seconded the motion; motion carried with three aye votes.

PROGRAM REVIEW

COLUMBIA BASIN DOMESTIC VIOLENCE SERVICES, Kennewick

Chairman Tull said there was a presentation made yesterday on this group and staff recommended temporary certification of this licensee due to concerns about election procedures, which the organization appears to be working on and will be reviewed again in the next few months. **Commissioner Phelps** moved for approval of temporary certification; **Commissioner Heavey** seconded the motion; motion carried with three aye votes.

QUALIFICATION REVIEWS

AMVETS, Tacoma
YAKIMA Y.W.C.A., Yakima

Chairman Tull said these were also presented yesterday with staff recommendations for certification. **Commissioner Phelps** moved to approve both organizations; **Commissioner Heavey** seconded the motion; motion carried with three aye votes.

BIG BROTHERS/SISTER OF KING COUNTY, Seattle

Chairman Tull said staff's recommendation for this group was also for certification; **Commissioner Phelps** moved for certification; **Commissioner Heavey** seconded the motion; motion carried with three aye votes.

EDUCATIONAL INSTITUTE FOR RURAL FAMILIES, Pasco

Chairman Tull said there was a follow-up review presented on this group with a staff recommendation to certify this group. They had been operating under temporary certification pending this report. **Commissioner Phelps** moved for certification; **Commissioner Heavey** seconded the motion; motion carried.

CENTRAL AREA YOUTH ASSOCIATION, Seattle

Ms. Cass-Healy said staff also requested an extension for Central Area Youth Association of Seattle. **Director Miller** said this should be scheduled for the next Commission meeting held in the Seattle area. **Chairman Tull** said the staff's recommendation is to continue temporary certification for up to an additional six months to give time for completing the review. **Commissioner Phelps** so moved; **Commissioner Heavey** seconded the motion; motion carried with three aye votes.

JRRANAMO ENTERPRISES d/b/a Yardarm Pub
MOTION FOR WAIVER OF TIME ON PETITION TO FILE A REVIEW OF THE ADMINISTRATIVE LAW
JUDGES'S RULING
CAUSE NO. 95-0223

Chairman Tull said this request for an extension of time to file an appeal that will be discussed during executive session so that Commissioner Phelps can be briefed on the situation. It will either be taken care of by next month or will be addressed at next month's meeting.

COMMENTS OF PUBLIC OR PUBLIC OFFICIALS

Don Kaufman, Big Brothers/Sisters of Spokane, said their organization's bingo game is surrounded in three different directions by tribal gaming casinos with slot machines. He said the fourth largest expense for bingo operations in Spokane is occupancy costs, which he addressed at the last meeting and requested a moratorium on bingo licenses and a way to have two licensees share the same facility. He said if there is a reconfiguration of the occasions so that two licensees can share the same facility and no moratorium on licenses, vacated facilities will be filled with new bingo halls. More bingo halls would dilute the market.

Chairman Tull said the Commission wanted to explore this issue further. **Mr. McCoy** said he was assigned to look into this matter, which consists of two issues; one, whether a moratorium could be issued; and two, whether the definition of "occasion" could be modified. **Mr. Kaufman** said his main question was the moratorium. He said WAC rule defines "occasion," which means the definition comes under the Commission's purview. **Mr. McCoy** said the question of the moratorium is clear under the statute in that the Commission is precluded from limiting the number of licenses it issues, so the moratorium would be precluded by statute. The question of the "occasion" is a definitional question that would require some more discussion on how it should be addressed.

Chairman Tull asked if local government can make their approval of gambling subject to a limitation or a temporary limitation, such as a moratorium; **Mr. McCoy** said no, the only authority the local government has is to allow or disallow a certain type of gambling. If it is allowed for one, it must be allowed for all.

Chairman Heavey asked if that would be a denial of equal protection.

Director Miller said it could be done by zoning and location based on local ordinance.

Commissioner Tull said as a general principal, the agency should not limit access to the market place. The limitation could only be suggested because of crisis. The solutions wouldn't be very useful if there was not a limitation on licensing. He suggested to Mr. McCoy that even if the ability to discuss the moratorium was limited, the Commission still has ability to discuss the definition of occasions and how that might impact sharing of facilities.

Mr. McCoy agreed.

Commissioner Tull asked Mr. Kaufman if it would be useful to discuss definitional issues, even though it appears that the moratorium on new licensees is problematic.

Mr. Kaufman said yes. He said he would speak with Spokane licensees. He said there is not support statewide, but if something was done on a geographical basis due to a particular problem, Spokane may be willing to work together on something like what Commissioner Tull suggested.

Mr. McCoy said there is precedent for local experimental temporary rules and procedures.

Mr. Kaufman said he would try to determine Spokane's attitude towards the suggestions for discussion at the November meeting.

Commissioner Tull said he is sympathetic to the needs of charitable organizations and he knows they are under a lot of pressure. He asked Mr. Kaufman to keep in touch with Mr. McCoy and staff as ideas develop.

Mr. Kaufman thanked the Commission for looking into the matter.

Commissioner Tull asked if there were any other questions.

Robert Saucier, representing the Washington State Licensed Beverage Association (WSLBA), introduced himself. He said WSLBA does not agree with submitted rule WAC 230-30-080 regarding pull tab dispensing. He said WSLBA has a different view than staff on two items in the rule. First, allowing more than one dispenser for a pull tab dispensing device -- this is important in marketing. He indicated a device was sent to the Lacey Commission office several months ago. He said this device was the type licensees would like to use to help market pull tab sales. The device brings the pull tabs closer to the players, because of its small size. It can be located in numerous locations in an establishment and security is better. However, the problem with the device is its small size. The machine is not feasible or legal in Washington, because it only holds 600 tickets. No manufacturer puts out a game that has only 600 tickets.

Commissioner Tull asked why manufacturers don't make games with only 600 tickets.

Director Miller said while there is no minimum number of tickets in a series, it is not cost effective to make them. The size of the series is a market issue.

Mr. Saucier agreed size of the series was a market issue for the following two reasons: first, the cost of a game amortized by the 600 tickets; second, the prize limitations. He mentioned the second part of WSLBA's petition regarding WAC 230-30-080 is to increase the maximum number of tickets.

Commissioner Tull said it is an interesting issue and staff are continuing to debate it. He asked if it would be useful to focus on this at the November meeting.

Mr. Saucier said the way pull tab games are typically played in Washington, tickets are mixed in a clear container and the flare is on top, or the container is against the wall and the flare will be somewhere else and there will be a number on the flare and container. He suggested the integrity of the container is the same as in WSLBA's proposal.

Mr. Saucier said under WSLBA's proposal, tickets would be placed in a large box, with the box and flare number together, and a machine would be nearby with the same number. For example, he said there would be game number 14, box number 14 and machine 14. The players are aware the tickets they get out of a dispensing device are associated with a box of tickets and a flare with the same number. The player knows the remainder of the tickets in the series are not contained within the dispensing device (because the device can't hold all the tickets), but are contained in a box in plain view near the device. He said something similar to this is allowed now on their books. He said this was discussed with staff yesterday. He said Washington currently allows tickets to be put into a device, taken out and put onto a cart in \$10 stacks and a person will go through the facility, commonly in bingo halls, with the cart selling tickets. He is aware that staff have concerns regarding keeping track of tickets. He said he'd like to work through that and figure out how games can be marketed differently than they have in the past.

Commissioner Tull thanked Mr. Saucier for the overview.

Mr. Saucier said the second issue is the size of the games. He said a few years ago the Commission changed the maximum prize limit on tickets from \$250 to \$500. A mathematical problem exists offering a \$500 prize in a 6,000 ticket series. He demonstrated that a 6,000 ticket-50 cent game has a purchase price to the operator of \$36.72, the tax rate in most jurisdictions is 5 percent and the number of tickets 5,940. Payouts consist of one grand prize at \$500 and other multiple prizes for a total payout of 60.9%. He said this particular game is the best case scenario for an operator. He said typically operators tend to have games greater than 60% to entice players to play. He said if 1,000 tickets are sold, or 16.8% of the game, the percentages work out to \$221 in prizes, \$25 in taxes, for a total cost to operator \$282, which gives a profit/loss of \$218. But if the \$500 prize is won, then the operator has lost \$282 on the game. There is also a similarly significant risk to the operators if they have sold 2,000 tickets. The problem is that in Washington state, once the \$500 prize is won, the game is over -- if the first ticket sold is the \$500 ticket, usually no one else plays. He said even with two \$500 prizes, when one is gone, the game is dead and people won't play for the other prizes. He said this is why he is trying to increase the number of tickets in the game, so perhaps they could offer four or six \$500 prizes, so when one or two are won, the game is still viable.

Mr. Saucier also noted increasing the size of the series increases the statistical sample the operator has. Operators make money on pull tabs by monitoring the game closely and closing the game when they are ahead. That is why the \$500 game has not been popular in Washington. Operators feel they need larger series size to try and compete with the 25,000-28,000 ticket games the tribes have, where cars and \$5,000 cash prizes are given away.

Commissioner Tull asked if there were any questions. He said Mr. Saucier's comments were interesting and raised questions.

Director Miller said this issue is being reviewed and there is a disagreement on the size. Commission staff have agreed to go to a 10,000 ticket series and test that. We have not agreed to go further because testing requirements would impact staff. He said the agency is looking at the separate device issue. He said there would be discussion next month on this issue.

Regarding changes to WAC 230-02-300, **Mr. Saucier** said his organization came up with their amended version of the rule and staff have a completely different version. He would like staff to consider adding a subsection to staff's version specifically addressing limited partnerships. The old rule does not specifically address limited partnerships and in his discussions with Mr. McCoy, the laws regarding limited partnerships in Washington changed after the Commission established its rule. He requested that this be considered as an addition to the substantial interest definition.

Commissioner Tull asked if there were amendments pending.

Director Miller said yes, for background qualification, what is deemed to be a substantial interest. Staff have put out a whole new rule, based on our experience of what should be looked at. He said he has asked Mr. Saucier to talk to Ms. Cass-Healy on this issue and find out what our position is from a licensing standpoint.

Commissioner Tull said that it can be addressed at the November commission meeting, if it is not addressed prior to that. He asked for other comments.

Kim Davis, owner of Little Dog's Restaurant in Kennewick, introduced himself and said he has licenses for Class "E" card room and pull tabs. He said the rule changes in card rooms are good. He said everyone is

struggling to compete with Indian gaming and are in big trouble and everyone knows it. He asked if the rules on card playing, such as hours limited is a done deal. He asked if the procedure was debatable, when the rules go into effect and when can they be used.

Commissioner Tull said an elaborate rule making procedure is dictated in large part by state statute. It involves a series of public hearing opportunities, as well as the ability for anyone to provide written testimony submissions. All of this is considered by the Commission and when the Commission is ready to make decisions, they sometimes approve rules as printed, sometimes with amendments, and sometimes rules are denied. He said people who take the time to follow the rule making process have learned they have significant opportunities to influence the direction of rules and ensure problems are addressed. He said many rule making efforts are from various constituents within the industries that are regulated. He suggested Mr. Davis speak with organizations and staff, and look at the rule making process as outlined in our rules. He said public testimony, written submissions and staff's interaction with industry groups and individual members ensure that only rules that matter come forward and negative impacts are only those that must take place.

Mr. Davis asked if the wording "final action in November" meant that at the next meeting there would be a chance to see some of the amendments go into affect.

Commissioner Tull said the rules take affect on a different schedule and that varies. **Director Miller** said if the rules were approved in November they would be effective January 1, 1996.

Commissioner Tull said in emergency situations, changes can take place sooner.

Mr. Davis said he supports the rule. He is struggling and looks forward to the opportunities to compete. He thanked the Commissioners.

Commissioner Tull thanked Mr. Davis for his input.

Mr. Cuta said he likes working with the Gambling Commission because it seems to be productive. He said he is familiar with state boards and commissions and believes flexibility in an agenda is expected, but public comment is normally at the end and it is reasonable to expect such.

Commissioner Tull noted in the city and county where he is from, all public comments are at the beginning of the meetings.

Mr. Cuta said disabled people are limited in their transportation. The board members he asked to be present wouldn't arrive until 1:00 p.m. as they had to make dial a ride appointments 24 hours in advance and they will arrive at 1:00 p.m.

Commissioner Tull said the meetings never last until 1:00 p.m.

Commissioner Phelps noted there was a provision in the agenda that if anyone needs special assistance for a disability or access, the agency would accommodate them. He said accommodations can be made, if they are known in advance and we are happy to do so.

Mr. Cuta said he appreciates the braille agenda and getting information on disc. However, he wasn't able to anticipate the changed agenda until he heard it that morning.

Commissioner Tull said the number of times meetings have gone past 12:30 in the past 10 years of his involvement were rare. He suggested that in the future, agendas are always highly variable. Whether it is meetings or a court docket, one has to be present from the beginning to know for sure. He appreciates Mr.

Cuta's difficulties and when the Commission knows about a particular timing problem, attempts would be made to accommodate, but not necessarily by staying until 1:00pm, because of travel arrangements. **Commissioner Phelps** and **Tull** noted that in this instance, written submissions are appreciated, the Commission meets around the state to give everyone the opportunity to attend meetings.

Mr. Cuta said he has made a written submission in the event something went wrong.

Commissioner Tull asked if Mr. Cuta's was talking about his letter dated October 13, 1995.

Mr. Cuta said yes.

Commissioner Tull said the letter was appreciated.

Mr. Cuta said the United Blind Bingo (UBB) operation is in trouble. He said they have been working with agency staff the best they can to turn things around. He said UBB's lease is a burden and attendance is low. Tribal casinos are taking business and there is less disposable income in the Tri-Cities due to recent layoffs at the Hanford Nuclear Reservation. UBB operates weekdays only and he felt that moving one session to a Saturday or a Sunday might help. Other than that, he didn't see a way to improve attendance. He said UBB is in the same building as the Palace, who operates on Saturday and Sunday. Therefore, moving to a weekend would be hard unless UBB could get out of their lease. A location has been found that costs 1/3 of the current location. This would help net income levels and give the ability to move one weekday of business to the weekend. There are commonly stated reasons why attendance is low and he has calculated UBB's accounting figures over the years and he said it is hard to make any correlation between attendance and anything. He said it is unknowable and anyone who claims to really know the gambling business, more power to them, but to him you can't depend on anyone coming through the door. He said UBB's payout percentages are high and they need to be lowered and this will probably reduce attendance, resulting in a lower net income. He said it's a vicious circle.

Commissioner Tull asked Mr. Cuta if other games have gone out of business in the Tri-Cities in the past.

Mr. Cuta said some of the smaller ones have, like fraternal organizations. His specific circumstance is UBB's lease and location right now, which are problems that are not affecting other operations.

Commissioner Tull asked if Mr. Cuta's landlord appreciates that UBB going out of business would cut off his revenue stream completely.

Mr. Cuta said UBB has talked with the landlord. They have hired an attorney and will continue to negotiate with the landlord to get out of the lease without going out of business. He said the landlord has bills to pay and doesn't care if UBB goes out of business, as he needs a tenant. There is no benefit to the landlord to let UBB out of the lease, unless something can be negotiated. Eventually the space will be open, as long as UBB has a lease, they have to pay.

Commissioner Tull said the benefit to the landlord would only be there if tenancy was replaced, even at a lower rate, but without interruption.

Mr. Cuta said the landlord is currently advertising. He said the Palace is moving into a new building soon.

Commissioner Tull asked Mr. Cuta if he had a specific request of the Commission.

Mr. Cuta said no, he just wanted to make a few statements.

Commissioner Tull told Mr. Cuta that his written materials were well prepared and he understands the emergency rule which was passed that morning would help a few aspects of the problem. He said over the years, it has been debated whether licensees could sign leases that were expensive.

Mr. Cuta said when the lease was signed it wasn't that bad, it was a good area of town.

Commissioner Tull said the Commission has backed down from being paternalistic and doesn't want to be responsible for understanding local markets across the state.

Director Miller said the Commission used to look at lease prices and said they would not take that approach in that area. The Commission put some organizations on notice saying we thought the lease was too high, the lease will be hard to keep and then suggested alternatives, but has never denied a license because of a lease, nor has the Commission put UBB on notice that we thought their lease was too high. Leases are a difficult issue. As the whole issue of meeting net requirements is looked at, leases will be considered. The UBB has a seven percent net income requirement, because they are not one of the larger games. They are currently at negative 3.6 percent net income.

Commissioner Tull said games have been closed in the past that were not making it financially. He asked for other comments.

Mr. Cuta asked if he could continue.

Commissioner Tull said yes.

Mr. Cuta said in regard to UBB's programs, they have an unquestionable benefit to the services offered to blind people in the area and loss of income would have a detrimental effect on the services. He said there are only a few hundred people involved and finding alternative sources of funds. He said they will pursue the United Way and other things, but the reporting requirements are extensive and require administrative staff which they can't afford.

Commissioner Heavey said he has read Mr. Cuta's letter and Mr. Cuta is repeating what is in the letter. There are a number of people present who are interested in I-651 and if Mr. Cuta could limit his remarks it would be very useful.

Commissioner Tull asked Mr. Cuta to conclude his comments.

Mr. Cuta said a statement was made in discussing the emergency rule, that when an organization was put on decreased net income restriction it received a grace period. He said UBB's license has gone down two classes. He said this gives a new gross limit to work under and they will exceed that in six months, the grace period is a lot less than a year, unless there is another extension after that, or some other process. He said things are critical now for UBB. He thanked the Commission.

Commissioner Tull thanked Mr. Cuta.

Commissioner Heavey told Mr. Cuta if he had more comments that he didn't have the opportunity to say today, to submit them in writing.

Commissioner Tull said there are a couple of problems the Commission has. One is that the Commission does not have the ability to limit the number of licensees and pressure on licensees in the competitive sense that can come from within the licensing community and from without, in light of the absolute restriction in federal law in tribal gaming, in particular Class II, such as bingo and card rooms. He said he

appreciates being informed as to the problems licensees are facing, but there are limits regarding what the Commission can do. He said they try as individuals to help. He asked if there were any more comments from the audience.

Director Miller thanked the Commission and said he would summarize parts of the I-651 analysis and take questions. He said that it is not his intent as director, or in preparation of the analysis, to form an opinion either pro or con. It is the agency's sincere desire to give an objective analysis to I-651 as it has significant impacts on gambling and we are the agency in charge of gambling enforcement. He said the analysis was prepared at the request of the Commission at the September meeting. The Commission asked for an objective analysis of the scope of the initiative, how the parameters under the initiative compare and contrast to current compacts based on our experience, and to set forth models of potential impacts to the agency.

The legal effect of I-651 is that it changes state gambling law, RCW 9.46. The initiative is in the form of a compact, as opposed to a brief statute. It substitutes a new compact for the ones currently negotiated. Under I-651, tribes with compacts executed before November 7, 1995, may not adopt the I-651 compact until their compacts expire. If I-651 passes, tribes without compacts could have a new compact. In summary, I-651 changes state law and is in the form of a compact, thereby replacing current negotiated compacts with a new compact.

On the scope of gambling, I-651 has no market limitations regarding size, wagering limits, hours of operation, types of gambling permitted, including all types of gambling devices. It would allow slot machines, video poker, any type of device with no limits on the size or number of facilities that a tribal governmental could authorize.

Commissioner Heavey asked if there is any state role as to what types of devices may be used. Do any other states in the US that unilaterally permit gambling devices to be brought into the state and operated, including Nevada and New Jersey.

Director Miller said I-651 states any gambling device allowed in Nevada or New Jersey would be authorized in Washington. It would be subject to limitations, but not Washington state limitations.

Commissioner Tull asked who would verify.

Director Miller said under I-651 the tribe would determine that. He said I-651 allows 10 percent of the slot machine revenue (net win), after all expenses, would be distributed to all citizens who vote in the next election. There is no way of knowing what 10 percent means because it is after all expenses are paid. It is important that no amount can be given. There is speculation as to how much this will be. Some articles say \$100 others say \$10. The agency has no opinion on the amount. He said the 10 percent dividend is conditioned upon the state not authorizing machine gaming to anyone other than tribes. If the state were to authorize non-Indians to have machines, the 10 percent dividend would cease.

Commissioner Heavey asked if that was any device that was not already authorized.

Director Miller said yes. Any type of gaming device, slot machines, video poker, etc. Currently there are no devices authorized in Washington. He said that licensing would be done by the tribe. The state would have limited ability to conduct some background checks, but there would be no state jurisdiction, so that background checks would be limited. The accounting and auditing would be done by tribal governments and the state has a limited background role, but there is no state jurisdiction, therefore no state license involved. State agents must have permission from the governor to inspect tribal casinos and they must be accompanied by a tribal representative. The state would only have the ability to inspect public areas. 12

hour notice must be given to go into a non public area and 48 hours notice to inspect and copy any gaming record.

Commissioner Phelps said I-651 contains "the compact." If the compact says the governor's permission, what prevents a tribe from saying that is an incident by incident permission.

Director Miller said nothing would prevent that. He said regarding copying documentation, under I-651, if the agency could not maintain confidentiality, we would not have access to the documents. We are currently subject to public disclosure law. He said the state should not play a role in the regulation because of the limitations on its ability to effectively monitor this compact under I-651.

Commissioner Heavey commented that if there was a failure in the regulation of a tribal casino, the Commission would be subject to criticism, but it wouldn't have the ability to properly regulate to begin with.

Director Miller agreed.

Commissioner Tull said the Commission is mentioned in I-651 as window dressing.

Director Miller said under I-651, a dispute would go to mediation. Mediation is not binding unless agreed on and the ability to resolve a dispute does not exist. He said there are limited waivers of sovereign immunity to deal with certain issues in court. He didn't want to address those because of pending matters.

Director Miller next compared I-651 to current compacts. Currently, sixteen compacts have been negotiated and eight of the tribes operate gaming facilities. He said the agency is asked why it is so restrictive. The tribal casinos that have been negotiated are on their way to grossing over \$300 million. They are not small operations -- they are professional, well-regulated, profitable operations. He said negotiated compacts are good faith attempts at viable casino gaming establishments. We don't negotiate slot machines or unlimited size or bookmaking because state law prohibits those activities. Current compacts allow a meaningful role for the agency as the Commissioners wanted and that is what has been achieved. Current compacts define all terminology, I-651 does not. Current compacts allow one gaming casino per tribe. Phase 1 allows for 112 hours per week, \$250 wagering limits, 31 tables with one for charity and no slot machines. When the audit program is completed and there are no violations in federal court and no material violations of the compact and the gaming agency is in place, Phase II is implemented. Phase II is 140 hours a week, 20 hours a day, \$500 wagering limits, 2 tables for charities in the community and a 2 percent community contribution, all of which are not in I-651.

I-651 allows for unlimited size and number of facilities, higher wagers, no charitable tables and no community contribution. Current compacts prohibit the extension of credit, I-651 does not. Nevada extends credit, Washington does not. Current compacts prohibit firearms in facilities, except for tribal law enforcement agents or state agents. I-651 does not address the issue. Current compacts require licensing by the tribe and state certification of all employees involved in the gaming operation, including financiers and suppliers. Through state certification we exchange jurisdiction. We have the ability to remove a problem along with the tribe -- this is co regulation. Under I-651 the state does not do any certification, there is no exchange of jurisdiction and the licensing is one time only by the tribe.

Commissioner Phelps asked if the state would participate in background investigations under I-651 and whether the state have any veto power for people found to have serious problems, criminal histories or links to organized crime.

Director Miller said the role is limited to background checks on certain key employees, but there would be no ability to remove. The state could only advise the tribe of its findings. Any disputes would go through

dispute resolution or mediation, which is not binding if there is no agreement. It would be up to the tribe to remove the parties in question. The state would be entitled to recover reasonable costs and fees as currently set forth although they would be subject to dispute resolution, which is not binding. Who pays the cost of dispute resolution is not clear. Under current compacts, the state works with the tribe, but also certifies gaming employees. Under I-651 there would be no authority to do so. The current system of checking manufacturers, financiers and suppliers would be removed under I-651; such checking would be strictly tribal. Current compacts give the state complete authority to suspend, revoke or deny any gaming certification, independent of the tribal government. Under I-651 the state has no rights, it is strictly tribal. Co-regulation would not exist under I-651.

Commissioner Heavey asked if the federal government would have the ability to suspend, revoke, or deny tribal licenses.

Director Miller said it was questionable. He said the federal government has jurisdiction over Class II gaming and the authority to do background checks on management companies and key employees, but whether they have the resources to do that is questionable. Currently, they are trying hard but do not have the resources to do that nationwide.

Commissioner Tull asked how many field people National Indian Gaming Commission (NIGC) has in this region.

Director Miller said one.

Commissioner Phelps asked how many people the Commission has.

Director Miller said the agency has a staff of 140 for the state of Washington. NIGC has a staff of 38-40 nationwide.

Commissioner Tull asked if NIGC has one field person for 4-5 states.

Director Miller said to the best of his knowledge, yes. He said that NIGC has jurisdiction over management companies and key employees, but not over Class III gaming operations. They have no regulations or rules in place for Class III gaming at all. NIGC has no rules or regulations in place for Class II or how to operate bingo, etc. NIGC has rules defining Class II and some background checks for management companies and key employees.

Commissioner Tull asked what are the petitioning tribes really trying to do with the initiative. It doesn't seem to be about machine gaming, but doing away with the regulation of gaming. The addition or subtraction of machines is just a portion of the problem.

Director Miller said the role of NIGC would be debated. NIGC is trying increase their budget to get more personnel. NIGC staff has increased from what it used to be, but their primary focus and resources are spent on background investigations and interpretative statements. NIGC took an enforcement action with the Lummi tribe --the first action they have taken. Their ability to go forward at this time is limited, hopefully it will improve.

Director Miller said I-651 does not require a tribe to create a tribal gaming agency, but leaves it up to the tribe. Current compacts require tribes establish a tribal gaming agency. I-651 does not address the issue of tribal gaming agents and inspectors. Current compacts require all tribal gaming inspectors to be independent of the gaming operation and accountable only to the tribal regulatory enforcement entity. Current compacts require tribal gaming inspectors be present at all times in the casino. I-651 does not

address this issue. Current compacts require any compact violation to be reported to the tribal gaming agency, by state and tribal people, and forwarded to the Gambling Commission within 72 hours of the violation. I-651 does not.

Chairman Tull said he believes one of the compacted tribes was quoted as saying I-651 would allow individual ownership of casinos. A tribal member could own and operate a casino. Would the initiative allow individual casinos and no tribal gaming agency?

Director Miller said current tribal-state compacts require tribes to establish a tribal gaming agency and his understanding is I-651 does not. He said I-651 is a very limited form of compact. State compacts are about 80 pages long and include rules and regulations. I-651 compacts are 5-6 pages. Current state compacts provide for unlimited state inspection rights, with access to all areas of the facility and the ability to inspect and copy documents without notice. This gives the state the ability to effectively regulate. Under I-651, 12 hours notice must be given to inspect non-public/private areas and 48 hours notice to inspect documents. Tribes can refuse to allow documents to be copied, if the state cannot maintain confidentiality.

Commissioner Phelps asked whether the state can make surprise inspections on compacted casinos.

Director Miller said as a courtesy, the tribe knows the state is there, but 12 hour notice is not given to go into the count room, cage, or surveillance areas. The state goes in with the tribe, unannounced, and does their job.

Commissioner Phelps asked the reason for no notice in the compact, compared to the 12 hours delay.

Director Miller said that a delay may impact items of interest.

Commissioner Phelps asked if giving 12 hours notice is reasonable.

Director Miller said it would hamper the state's ability to do their job. Regulation has to be done on the ability to go in unannounced, especially with documentation and records. There is no reason to have a 12 hour delay. The delay was specifically eliminated from the compacts. The state gives reasonable notice out of courtesy, but not 12 hours.

Commissioner Phelps asked if we give notice to the tribal gaming agency, though it is not required.

Director Miller said yes.

Commissioner Phelps asked under I-651, if there is no gaming agency, who would get notice.

Director Miller said that notice would be given to tribal chairmen or tribal governments. Regulatory jurisdiction, the ability to enforce the terms of I-651, does not provide for state enforcement of the compact. It would be done through dispute resolution, which is not binding. Current compacts incorporate criminal jurisdiction and all gambling prohibitions in Washington state. I-651 does not incorporate the prohibitions and criminal jurisdiction and the state would not be able to enforce these laws in tribal casinos as we currently do under existing compacts.

Commissioner Heavey asked if a tribe could run a bookmaking operation and a number operation under I-651.

Mr. McCoy said there may be federal laws that apply to bookmaking. It is not specifically prohibited in I-651, but there are federal laws that address it. Bookmaking may be possible under I-651, but not under federal law.

Director Miller said federal law passed called "NFL," which bans states from betting on the outcome of sporting events. The question is, can tribes do sports betting today, given the NFL.

Mr. McCoy said NFL specifically addresses compacted gaming.

Commissioner Heavey asked if NFL impacted numbers games.

Director Miller said that numbers games constitute a lottery.

Commissioner Heavey asked if the tribes could run a number game, could tickets be sold on street corners and through news agents.

Mr. McCoy said federal laws may also address that issue, and state law if the activity occurs off of Indian lands. I-651, like IGRA, only applies on Indian lands.

Commissioner Heavey asked if they could operate off Indian land.

Mr. McCoy said it would be illegal for them to operate off of Indian lands.

Commissioner Tull asked if the state could make arrests if people were conspiring to cheat customers or the house within a I-651 casino.

Director Miller said no. Current compacts say who makes an arrest, who prosecutes and how tribal and non tribal members are dealt with, but I-651 does not address these issues.

Commissioner Tull said jurisdiction is created under our compacts and under I-651 there would be no jurisdiction. He asked if a letter could be sent to tribes requesting they correct problems.

Director Miller said potentially the US Attorney could send a letter. Under I-651 the state has no authority to enforce the criminal laws of the state.

Commissioner Heavey asked how I-651 would affect Indian trust lands.

Mr. McCoy said the definition of Indian lands under IGRA is different than the definition of Indian lands under other federal laws. In order to be deemed Indian lands, a tribe must "exercise governmental authority" over the land, as well as it be held in trust. No interpretation has been made as to what "exercising governmental authority" means. Mr. McCoy said I-651 does not address this issue. I-651 says "on Indian lands as defined in IGRA." IGRA does not address what Indian lands are specifically, other than stating a tribe must be "exercising governmental authority" over the land.

Commissioner Heavey said his understanding of IGRA is it deals with buying land and opening a gambling operation on trust land.

Mr. McCoy said I-651 would not affect the current structure of IGRA, regarding how Indian lands are addressed.

Commissioner Heavey asked if gaming on trust land would require the governor's approval under I-651.

Mr. McCoy said not necessarily. It would depend on where the gaming is located. There are three types of land that are involved. Reservation lands, land within the original bounds of the reservation. There is a question regarding whether lands held in fee within the original boundaries of the reservation are covered under IGRA. Second, trust lands held by the US on behalf of an Indian tribe or a tribal member. Those are defined as Indian lands if a tribe exercises governmental authority over them. There is a question of fact regarding whether they are Indian lands, based on exercising governmental authority. Third, land that is "after-acquired" land -- land acquired after the reservation was established. If the after-acquired lands are taken into trust, gaming may occur on those lands only if the governor concurs and if the land is not contiguous to an existing reservation, or if it is not a new reservation set aside for a recently recognized tribe.

Commissioner Heavey clarified I-651 does not affect the definition of Indian lands.

Mr. McCoy agreed.

Commissioner Heavey said that under I-651, unless there was governmental approval we would not anticipate the opening of a casino in downtown Seattle.

Mr. McCoy said there is nothing in I-651 which would directly affect the issue of whether that could happen. There are trust lands located far from reservations. There is question as to whether Indians exercise governmental authority over those lands.

Director Miller said we told tribes we would not negotiate gaming on trust lands, unless tribes could demonstrate they exercised governmental control over the land. We have only negotiated gaming on the reservation. Most of the tribes with whom we have negotiated do not have trust land. With tribes that do have trust lands, the issue is whether they exercised governmental authority over that land before 1988, and who makes that determination.

Director Miller also noted I-651 does not require the governor sign a compact and thereby approve a gaming location. IGRA does not require the governor's approval with respect to trust land acquired before 1988 over which a tribe exercised governmental control. As far as acquiring new trust land, I-651 doesn't change the governor's right to say no to gaming on such land.

Mr. McCoy concurred with Director Miller's comments.

Director Miller predicted we would see gambling on trust land, which we don't have today, except those tribes operating without a compact in Eastern Washington.

Director Miller said compacts require tribes to have a gaming agency and to adopt gaming rules and regulations. I-651 does not require a tribe to adopt regulations.

Commissioner Phelps asked if IGRA requires tribes to have a gaming agency.

Mr. McCoy said IGRA does not specifically require that tribes have a gaming agency; however, it does require a tribal gaming ordinance and the ordinance has to be approved by the Secretary of the Interior. He said he is not aware of any tribal gaming ordinances that have been denied.

Director Miller said I-651 requires the casino to maintain detailed records. Current compacts also require maintenance of records and persons barred. In this regard, I-651 and current compacts are consistent.

However, I-651 does not set out specific operational regulations regarding security requirements. Current compacts require surveillance systems, secured cashier's cage, etc.

Director Miller said I-651 sets forth dispute resolution as a remedy to a breach of the compact, resulting in court action if the dispute is not resolved. It is unknown if a federal court would have jurisdiction to oversee those disputes and he didn't want to take a position on that issue. It is something for debate as state law cannot confer jurisdiction on a federal court. The arbitration and mediation is not binding unless both parties agree to be bound. Current compacts allow the state to enjoin a violation of the compact.

Commissioner Phelps commented that a lot of things that are important and appear in current compacts are not in I-651 compact. If the tribes decide not to do these things, there would not be a dispute for resolution.

Director Miller said we currently have the ability to dispute anything that is in current compacts. Since I-651 compacts contain no limitations, he does not know what we would dispute, except perhaps restrictions on our personnel and notice requirements.

Commissioner Tull asked if a tribe did not allow access within 12 hours, would a mediation process be implemented.

Director Miller said yes and potentially federal court could enjoin the action and the issue resolved in 6 months.

Commissioner Phelps commented the tribes would not subsidize the enforcement of that from the state's prospective.

Director Miller agreed.

Commissioner Phelps said it appears it would cost taxpayers, whereas now the compacts allow for payment of costs.

Director Miller said current compacts provide that all costs incurred in regulating Indian gaming is billed on a quarterly basis to the tribes. He said the initiative allows for reasonable costs and expenses to be recovered for the work the state would do.

Mr. McCoy said the mediation process set out in I-651 would require the costs to be bore by each of the participants, unless the dispute is found to be frivolous.

Director Miller said I-651 does not address issues of public health and safety. Current compacts address these issues and allow for renegotiation in unforeseen situations. I-651 does not provide a community impact contribution. Current compacts provide that 2% of the net win is paid to local law enforcement and other local agencies potentially impacted by the casino. Regarding amendment ability, duration and effective date, I-651 compacts have a severability clause stating that if any portion of the compact is determined to be invalid, the remainder will be effective. For example, if the 10% payment to the public was deemed invalid, the remainder of the compact would go forward. This is an important factor. Current compacts also include a severability clause and provide that if there is a change in state law, the parties have ability to go to court and resolve that issue.

Director Miller said he would comment on the probable role the state would play under I-651. A big issue is what happens to existing compact tribes. One possibility is that I-651 would not apply to current tribes, because their compacts don't expire. A second possibility is that currently compacted tribes could

unilaterally terminate their compacts and get a I-651 compact. This would change the jurisdictional issues with every tribe in the state if they chose to do this.

Regarding regulation, **Director Miller** said he read a newspaper article yesterday saying the state blasted the roles of Indian gaming agencies under the I-651. He said his recommendation to the Commissioners, as Director of the agency, would be the following: If the initiative passed, given the jurisdictional restrictions on the state's ability to do its regulatory job, he would recommend the state play no role in the regulation of Class III gaming because the role provided by I-651 is meaningless. He quoted a sponsor of I-651 who said "the state plays too heavy-handed of a role now, unfairly dictating to sovereign tribes how to run their operations." He also quoted Mr. Whitish, chairman of the Shoalwater tribe, from an article in the *Seattle Times*, "I am not interested in the state having unilateral power to come on the reservation and tell me what to do."

Director Miller said that the intent of I-651 is to keep the state out of Class III regulation and it does that effectively. The voters have a right to know the impact of the initiative. He said the analysis of I-651 concludes with some scenarios of what could potentially happen. The number of additional staff needed is still under review.

Director Miller next addressed Commissioner Phelps' question of what might happen if the initiative passed. He said this can only be pure speculation based on past history, past legislative bills. One scenario would be nothing changes, no legislative change, only the tribes have the large scale operations. The impact would be on existing gaming in the state and the tax base. He noted this scenario is unlikely, because there would be pressure to expand machine gaming off reservations. A second scenario would allow casino gambling off reservations in limited resort locations. There would be a reduction in current staff of about 30-40 people. A third scenario is unlimited expansion for charitable casino gambling where private entities are running on behalf of charities. A bill authorizing such gaming was reviewed by the legislature a few years ago and turned down. This third scenario has the potential to make a major impact on the agency because of the need to make sure that money goes to charity. More important, there would not be tribal gaming commissions working with the state to regulate together. It would be done unilaterally. That is why the impacts would be so great. A fourth scenario would be the potential impact of machines only. The most important thing to consider is the ability to regulate effectively, which does not exist under I-651 compacts. He asked if anyone had any questions.

Commissioner Phelps asked if this kind of unrestricted, unregulated, unlimited gambling goes on legally elsewhere in the US.

Commissioner Tull said there are many different models and it was always thought that our compacts offer the most extensive co-regulatory system in the country. He clarified that Commissioner Phelps question is what about areas that have seen big casinos but without a significant state role.

Director Miller said Louisiana recently put in slot machines with minimal state regulation and organized crime came in and took them over. It has gone on for the past two years and still is. There is very limited regulation and they are attempting to regroup and gain control. This is not tribal gaming, but state authorized gaming.

Commissioner Phelps asked how Louisiana's regulatory role compares to Washington's regulatory role under I-651.

Director Miller said Washington would have no role under I-651. There are some jurisdictions in the country which have class III gaming with tribes with very limited state regulation. Some have just blackjack and machines, without other types of games. He said he couldn't comment on the problems such lack of a

state regulatory presence has because the state officials have no role, and therefore they don't know what problems there are. The reason to regulate is to keep gaming clean and know what is there. What we would have is regulated vs unregulated gaming in the same jurisdiction and this is a potential problem.

Commissioner Tull noted it was possible for a tribe, or number of tribes, operating under the initiative to be successful self regulators.

Director Miller said yes, it could happen. The state role is minimal and the tribe could successfully regulate.

Commissioner Tull said the tribe would not have the assistance of the state under I-651 unless they went to an additional agreement.

Director Miller agreed.

Commissioner Tull said the tribe would not necessarily have the assistance when they were under an internal attack. One clear problem with I-651 is that since the tribe is not required to have a tribal agency and there is no cooperative co-regulation, the tribal governments have put themselves into a very unprotected situation. He feels this is why many of the compacted tribes are speaking out against I-651. The compacted tribes have analyzed the issues and see the benefit of having a viable tribal gaming agency and realize they don't need to feed themselves to the wolves.

Director Miller agreed and said under current compacts the agency works closely with tribes and it is a joint partnership in regulating the gaming. This is superior than having a single body doing regulation. The current program works and we have a lot of knowledge, resources and access to information. I-651 takes the state "out of the loop" and creates undue risks.

Commissioner Tull commented on what would happen if there is expansion off reservations. If I-651 passed, it would hurt tribes that have tough locations. Such tribes will not be able to compete. Since I-651 does not require tribes to have a tribal gaming agency, it is possible they would view their regulatory expenses as extra expenses that could be reduced to keep operations open. This is when the bad guys will step in and put their hand in the till. He said he read an article by Doreen Malone in Upper Skagit who was quoted as understanding the importance of regulation.

Director Miller noted that Ms. Malone's comment was that tribes didn't want the state telling them what to do. He said the state's role is not to tell tribes what to do, it is a partnership. There is an equal role in regulation. The tribe is the primary regulator and the state is there in partnership. That role does not exist under I-651.

Commissioner Phelps asked if there is anyway to screen the financiers under I-651, as the state does, to make sure that there is no organized crime affiliation.

Director Miller said the NIGC might have some impact, and the state could possibly have a limited role in background checks, but the state would not have the ability to say no.

Commissioner Phelps clarified that if the state found something wrong, they could not say it was unacceptable.

Director Miller said the state would share background information with tribes and the tribes would have to remove the party.

Mr. McCoy said NIGC has the authority to approve or disapprove management contracts and the question would depend on whether or not the financing arrangement would be included in the management contract.

Director Miller said that NIGC does not check suppliers.

Commissioner Tull asked if the tribes could try and get help from other federal law enforcement agencies.

Director Miller said tribes could request it.

Commissioner Tull commented if tribes are not required to have a tribal gaming agency and if somebody starts controlling the revenue stream on which the tribe depends, this could be a nightmare. If the situation were to blow up, it would hurt the tribes first and expose other people in the state to danger.

Director Miller reiterated that management companies have background checks completed by the NIGC. However, any manufacturer or supplier of gaming equipment or slot machines is not required to have background checks by the NIGC. Potentially, companies that are not licensed elsewhere could come into Washington.

Commissioner Tull said he read a book about organized crime efforts in certain aspects of the casino industry in Nevada up until about 15-20 years ago. There is a lot of room for bad guys to get involved in other areas. He now thinks requiring background checks are more important than he used to. People throughout the whole organization should be checked, not just people who deal the games.

Director Miller agreed. He thanked staff for their input and noted Ms. Tellefson did a great job under pressure in the last few weeks. He hoped the analysis gave the Commissioners an objective view. I-651 is obviously a vastly different approach than what the current compacts provide. He hoped the Commissioners understood why Commission staff made the recommendation they did.

Commissioner Tull thanked everyone for their work on the analysis of I-651. He asked if anyone knew the statute dealing with the Commission's role in addressing gambling issues and problems. In the past, questions have been raised regarding whether it was appropriate for the Commission as an entity to express opinions. So far the Commission has not. As individuals, the Commissioners have made it clear they would express their own opinions, but the more he hears of I-651 the more suspicious he is of the motives of the proponents and the more concerned he becomes of the implications of its possible passage.

Commissioner Phelps asked if Commissioner Tull was suggesting the Commission make a report and recommendation to the Legislature.

Commissioner Tull said he wasn't sure. He asked if RCW 40.07.040 does not require a report to the Legislature every year.

Mr Bishop said RCW 40.07.040 made mandatory agency reports become non-mandatory.

Commissioner Tull read the following from RCW 9.46.090: "[Subject to RCW 40.07.040, the Commission] shall, from time to time make reports to the governor and the legislature covering such matters in connection with this chapter as the governor and the legislature may require." He said they haven't required the Commission to make a report as of yet.

Director Miller said the only thing the agency has issued is the analysis.

Commissioner Tull said he wants to decide if the Commission should do something affirmative or adopt a resolution. He said if it can, he wants to.

Commissioner Phelps said we should adopt the report as being accurate and be able to vote on a recommendation to both the governor and legislature on I-651.

Commissioner Tull read from the statute that "members of the Commission and its staff may contact legislature or any of its members at any time to advise it of recommendations of the Commission." He said it doesn't make sense for the Commission to recommend that legislature oppose I-651. The Commission may be circumscribed as a result of election laws in the state, and the Commission must respect those laws. He said the Commission would be remiss if it didn't do the type of analysis the agency has prepared and distributed. He was hoping that an appropriate, legitimate way could be found to express the Commission's consensus. He asked for questions from the audience on the analysis of I-651.

Commissioner Phelps asked Director Miller to prepare a brief on the video poker initiative and its impact in comparison to Oregon's video lottery operation for the November Commission meeting. The other Commissioners agreed and asked Director Miller to prepare the analysis.

Grey Murray, Chairperson for CAUG, introduced himself and thanked Ms. Tellefson and Director Miller for their hard work and thanked Commissioner Phelps for requesting the review of I-651. He said the analysis hit on all the issues that have concerned CAUG. He asked for the agency's support in disseminating the information.

Commissioner Tull said that the Commission can't give support but can disseminate the analysis.

Don Kaufman, Chairperson of CAUG, thanked the agency for their work on the analysis, saying it was well presented and easy for people throughout the state who have an interest to determine the effects of I-651. He pointed out a few items the agency didn't address in the analysis. He said the lifetime appointment of the five board members for FTS is an issue. He explained FTS is the corporation that would disseminate the 10% of gambling revenues from slot machines back to the citizens. FTS has allowed themselves a lifetime appointment and the ability to set their own salaries. There is no clause for what happens if 50-100 million dollars are collected and then there is an allowance for further machine operation in the state by some other source and FTS no longer has to disseminate the money. He asked whether that money then becomes a retirement program for those people, or what. The single person casino issue is happening today. The casino in Chewelah is run by Buzz Gutierrez and his wife and is not overseen by the tribe at all. It is a non-compacted casino that has slot machines and a lotto pick 6 type machine.

Commissioner Tull asked if the operation of that casino overlapped with Mr. Gutierrez's role as head of the Spokane Tribe's Gaming Agency.

Commissioner Phelps said Mr. Gutierrez used to say that he was head of the gaming agency and he also had the casino.

Mr. Kaufman said Mr. Gutierrez was the first winner on his own pick 6 machine when it was installed. Mr. Kaufman said he is concerned with I-651's unlimited wagering. He said agency staff did an excellent job of controlling that issue. He said when there is unlimited wagering, there is a huge potential of laundering revenues from outside sources.

Commissioner Tull said this is one issue that hasn't been discussed. He noted that if someone had cash and they didn't want to reveal to the government the source of it, deposits over \$10,000 have to be reported by a bank. Someone could get \$10,000 chips, gamble for awhile and cash out.

Director Miller said this is a national concern and the treasury department is looking at this to require the same requirement on tribal casinos as they are in non tribal casinos. There is the potential for laundering funds. This is a federal issue and was not addressed in the compacts.

Commissioner Tull said there is a pending amendment to the Bank Secrecy Act.

Director Miller said it is important, but there is no relevance under the analysis of I-651 because the state would have no access to look at anything.

Mr. Kaufman said with no access comes no oversight and no background checks on line staff. He also noted that larger casinos are drawing some problems. The Muckleshoots have had a customer attack, the Asian couple in Spokane who played at Fort Spokane the night before and apparently won a lot of money and then turned up dead the next day. There are indications of what can happen in large scale gaming operations that concern everyone.

Commissioner Tull thanked Mr. Kaufman for his comments and asked if there were any more questions or comments from members of the audience.

Commissioner Heavey said that I-651 is representative of problems that have existed in our country since about 1900, when we started the Native Americans on to reservations and deprived them of sources of income and started feeding them watered beef, rotten rice, wheat and doing a number of things to them in disgrace of our society and it has been a continuing disgrace until recently. The solution to the problem was to give them the ability to run a gambling operation, which he wasn't sure was an appropriate way to resolve social problems. I-651 goes to that particular problem, as how tribes become self-sufficient. On top of that, our legislature, with the consent of the people they govern, has decided that one of the ways to avoid raising taxes is to have voluntary taxes by the operation of bingo games, etc. Citizens of this state provide services to the blind, migrants, domestic violence, etc. through bingo games and the like. These services are a very useful and needed part of our society. In order for tribes to be self-sufficient and provide services to their people, the federal government and states have opened up the doors to gambling, either through tribal gambling, non-profit gambling, or charitable gambling, as the panacea for solving our social problems and avoiding taxation. Voluntary taxation is fine and a process we have utilized. I-651, in his view is a very poor effort to address that problem, but it does emphasize the problem and bring it to our attention. He thinks we are short sighted if we address this just as saying we don't want to do that. The legislature should seriously look at this problem and look what I-651 is bringing to the attention of the people. The impact is that some Indian tribes efforts to resolve their social problems are coming at the expense of the rest of society by having unregulated gambling and limiting our ability to fulfill our legal obligation to protect all citizens from illegal activities. He doesn't want his remarks interpreted saying that I-651 is a good idea, but he believes the legislature has to address the issue of balancing the income raised by the charitable organizations for the benefit of groups against the efforts of the Indians to raise money to benefit their people and solve their problems. There needs to be a balance in society addressing these issues. He understands the resistance to I-651 and personally he joins the resistance but it should not stop here. He went to a seminar where he heard that Indian gaming in Pennsylvania reduces the tax impact by 600 million dollars. This has to be considered and incumbent upon all citizens to look at the problem and address it.

Commissioner Tull asked for comments.

Bruce Batson, executive secretary for the Washington Horse Racing Commission, introduced himself. He said his agency is designated with the responsibility to license, regulate and supervise horse racing in Washington. It is responsible, by statute, to encourage the development and growth of the equine industry in Washington. He said that our agencies have worked closely together in building relationships for his

aspect of gambling with the tribes. He thanked the Gambling Commission for their cooperation in assisting his agency in that effort. He said our analysis of I-651 did not touch on the impact it would have on horse racing. He has no doubt, given the history across the country, that the impact of I-651 passing on parimutuel horse racing in Washington would be tremendous. In other racing states, where unlimited casino gambling has taken root or encroached upon a major racing state, the racing industry is in serious trouble. In Kentucky, the mecca of horse racing, New York, Minnesota, California, Arizona, Michigan, etc., the racing industry is having to assert itself into that process, whether it wants to or not. Racing in Washington state has been around for 60 years. Economic studies have said that horse racing has a \$400 million economic impact on the economy in Washington. Horse racing in Washington proudly exhibits itself across the country and is viewed with a great deal of respect. This could be in serious jeopardy with the encroachment of full-blown gambling without the thought that was put into the compact process. I-651 will have tremendous effect on parimutuel horse racing in Washington.

There is a new race track being built in Auburn with a tremendous investment including acres of land used to raise horses. He said his agency has worked closely with the gambling agency in participating in the compact process. The compacts work for the compacted tribes and the horse racing industry. A great deal of thought went into it. He said Director Miller did a tremendous job in working with the horse racing industry and his agency in laying the foundation of the compacts. He thanked the Commission for their efforts.

Commissioner Tull commented the Horse Racing Commission may or may not have the same restrictions the Gambling Commission has as far a political activity. He asked Mr. Batson if he knew whether the horse racing industry, licensee community, have been alerted to the implications of I-651.

Mr. Batson said they are not on their toes but are very alert and alarmed. He said the HRC has discussed the impacts of I-651 informally. He said this is an initiative before the people of Washington and the HRC views its job to make sure that the impacts are discussed and there will be an impact on horse racing and other industries that are dependent on gaming.

Commissioner Tull asked for comments from the audience.

Mr. Cuta said his understanding of I-651 is minimal but it appears to deal with regulation of casino operations. He asked if there was anything in I-651 or could be added to I-651 requiring accessibility for disabled people in those operations. Such as machines that have video displays which are completely unaccessible to blind people. Most operations, services, public activities, especially having a connection to a government agencies are required to provide accessibility. He did not know what significance this has.

Commissioner Tull said we are unable to insert things into an initiative. Initiatives pass the way they are written. Changing the language requires a two thirds vote of the legislature or the legislature must wait two years after an initiative passes before it can amend the initiative's language.

Director Miller said there is a question whether the ADA would apply. **Commissioner Tull** said it isn't clear if the ADA or similar laws apply on reservations. He said there would probably be a mixed response from tribes; they would say they are sensitive to the issues, but would probably guard their sovereignty to the extent they could and say that the laws didn't apply. Some federal laws may apply. He thanked Mr. Cuta for his comments.

Commissioner Tull asked for any questions. There were none.

Commissioner Tull concluded the discussion on I-651 and thanked everyone for their input and thoughts. He said he had a letter which was received by fax this morning. It is a letter from the Governor dated 10-

13-95 addressed to Mr. Michael Aoki-Kramer, Rules and Policy Coordinator Washington State Gambling Commission. It reads as follows: Dear Michael. I was told of your driving mishap of this past Wednesday. As events were described to me by Commissioner Don Phelps, you have a great deal to be thankful for and proud of. Keeping control of a vehicle at highway speeds upon being struck by a falling tree is no small task. You kept your wits about you and brought yourself and your passengers, Susan Green and Don Phelps, to safety. It is no exaggeration that you saved those peoples lives. Please accept my personal thanks and on behalf of the people the State of Washington, our gratitude for your excellent handling of this emergency situation. Sincerely, Mike Lowry, Governor. Commissioner Tull said it was important that it be read into the minutes. He said he's sure Commissioner Phelps is happy that Michael handled the situation so well and hopes to see Susan Green back soon.

He ended the meeting by announcing it was Commissioner Heavey's birthday.

Chairman Tull adjourned the meeting.

NOTE: THESE PRINTED MINUTES PLUS THE TAPES CONSTITUTE THE FULL MINUTES.

Susan D. Green
Executive Assistant